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**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:

SEARS HOLDING CORPORATION, *et al.*,¹

Debtors.

Chapter 11

Case No. 18-23538 (RDD)

(Joint Administration)

**LIMITED OBJECTION AND RESERVATION OF
RIGHTS OF MCDONALD'S CORPORATION TO THE DEBTORS' MODIFIED
SECOND AMENDED JOINT CHAPTER 11 PLAN OF SEARS HOLDING
CORPORATION AND ITS AFFILIATED DEBTORS**

McDonald's Corporation ("McDonald's"), by and through its attorneys, hereby files this
limited objection and reservation of rights ("Response") to the Debtors' Modified Second

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are as follows: Sears Holdings Corporation (0798); Kmart Holding Corporation (3116); Kmart Operations LLC (6546); Sears Operations LLC (4331); Sears, Roebuck and Co. (0680); ServiceLive Inc. (6774); A&E Factory Service, LLC (6695); A&E Home Delivery, LLC (0205); A&E Lawn & Garden, LLC (5028); A&E Signature Service, LLC (0204); FBA Holdings Inc. (6537); Innovel Solutions, Inc. (7180); Kmart Corporation (9500); MaxServ, Inc. (7626); Private Brands, Ltd. (4022); Sears Development Co. (6028); Sears Holdings Management Corporation (2148); Sears Home & Business Franchises, Inc. (6742); Sears Home Improvement Products, Inc. (8591); Sears Insurance Services, L.L.C. (7182); Sears Procurement Services, Inc. (2859); Sears Protection Company (1250); Sears Protection Company (PR) Inc. (4861); Sears Roebuck Acceptance Corp. (0535); Sears, Roebuck de Puerto Rico, Inc. (3626); SYW Relay LLC (1870); Wally Labs LLC (None); Big Beaver of Florida Development, LLC (None); California Builder Appliances, Inc. (6327); Florida Builder Appliances, Inc. (9133); KBL Holding Inc. (1295); KLC, Inc. (0839); Kmart of Michigan, Inc. (1696); Kmart of Washington LLC (8898); Kmart Stores of Illinois LLC (8897); Kmart Stores of Texas LLC (8915); MyGofer LLC (5531); Sears Brands Business Unit Corporation (4658); Sears Holdings Publishing Company, LLC. (5554); Sears Protection Company (Florida), L.L.C. (4239); SHC Desert Springs, LLC (None); SOE, Inc. (9616); StarWest, LLC (5379); STI Merchandising, Inc. (0188); Troy Coolidge No. 13, LLC (None); Bluel.brht.com, Inc. (7034); Sears Brands, L.L.C. (4664); Sears Buying Services, Inc. (6533); Koart.com LLC (9022); and Sears Brands Management Corporation (5365). The location of the Debtors' corporate headquarters is 3333 Beverly Road, Hoffman Estates, Illinois 60179.

Amended Joint Chapter 11 Plan of Sears Holding Corporation and its Affiliated Debtors [Docket No. 4476] (the “Plan”).² In support of this Response, McDonald’s states as follows:

BACKGROUND

1. On October 15, 2018 (the “Petition Date”) and continuing thereafter, the above-captioned debtors (collectively, the “Debtors”) each filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”). The Debtors have continued to operate its business and manage its properties as debtor-in-possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code.

2. McDonald’s and the Debtors are party to multiple executory contracts, easement agreements, and unexpired leases throughout the country.

3. On November 19, 2018, the United States Bankruptcy Court for the Southern District of New York (the “Court”) entered the *Order Approving Global Bidding Procedures and Granting Related Relief* [Docket No. 816] (the “Global Bidding Procedures Order”).³

4. In accordance with the Global Bidding Procedures Order, on January 18, 2019, the Debtors filed the *Notice of Successful Bidder and Sale Hearing* (the “Successful Bidder Notice”) [Docket No. 1730], which among other things, announced that the Debtors determined that the offer submitted by Transform Holdco, LLC (the “Buyer”), established by ESL Investments, Inc. to acquire all or substantially all of the global assets, was the highest or best offer for the global assets. A copy of the asset purchase agreement between the Debtors and the Buyer (the “APA”) was attached to the Successful Bidder Notice as Exhibit B.

5. On January 18, 2019, the Debtors filed the *Notice of Cure Costs and Potential Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection with*

² Terms not otherwise defined herein shall have the meanings ascribed to them in the Plan and Disclosure Statement.

³ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Global Bidding Procedures Order.

Global Sale Transaction [Docket No. 1731] (the “First Cure Notice”). Exhibit A to the First Cure Notice lists three (3) contracts with McDonald’s (collectively, the “Contracts”). *See* First Cure Notice, Exhibit A, page 205 of 342, nos. 4750, 4751, and 4752. The First Cure Notice indicates that the cure amount for each of the Contracts is \$0.00.

6. On January 25, 2018, McDonald’s filed a limited objection to the First Cure Notice [Docket No. 1878] (the “Limited Objection”). Thereafter, on February 2, 2019, McDonald’s filed a supplement to the Limited Objection [Docket No. 2365] (the “Supplemental Objection”).

7. On February 8, 2019, the Court entered the *Order (I) Approving the Asset Purchase Agreement Among Sellers and Buyer, (II) Authorizing the Sale of Certain of the Debtors’ Assets Free and Clear of Liens, Claims, Interests and Encumbrances, (III) Authorizing the Assumption and Assignment of Certain Executory Contracts, and Leases in Connection Therewith and (IV) Granting Related Relief* [Docket No. 2507] (the “Sale Order”).

8. On March 5, 2019, the Debtors filed its Third Cure Notice. Exhibit B to the Third Cure Notice lists one (1) sublease with McDonald’s (the “Easement Agreement”) in regards to Store No. 36, located at 23222 W Valencia Blvd, Valencia, CA 91355. *See* Third Cure Notice, Exhibit B, page 28 of 29, no. 36. The Third Cure Notice indicates that the cure amount for the Easement Agreement is \$0.00 (the “Proposed Cure Amount”).

9. On July 9, 2019, the Debtors filed the Plan, as amended.

10. Section 13.1 of the plan provides:

On the Effective Date, except as otherwise provided in the Plan or Plan Supplement, each Executory Contract and Unexpired Lease not previously rejected, assumed, or assumed and assigned shall be deemed automatically rejected pursuant to sections 365 and 1123 of the Bankruptcy Code, unless such Executory Contract or Unexpired Lease: (1) as of the Effective Date is subject to a

pending motion to assume such Unexpired Lease or Executory Contract; (2) is a contract, engagement letter that has been approved by an order of the Bankruptcy Court, release, or other agreement or document entered into in connection with the Plan; or (3) is a D&O Policy or an Insurance Contract.

11. Counsel to Transform Holdco, LLC (the “Buyer”) and McDonald’s have been completing negotiations to resolve any outstanding issues related to not only the outstanding cure notices described herein, but any other potential agreements that would involve properties where McDonald’s and the Buyer might have a future business relationship (the “McDonald’s Leases/Contracts”).

LIMITED OBJECTION AND RESERVATION OF RIGHTS

12. McDonald’s is currently conducting an estoppel process to determine whether any amounts are owed or whether any obligations are outstanding under the Easement Agreement and the McDonald’s Leases/Contracts (the “Estoppel Process”). McDonald’s has begun the Estoppel Process on these open issues.

13. Accordingly, McDonald’s files this Response and reservation of rights to preserve its rights and interests under the Plan, agreements similar to the Easement Agreement and including, but not limited to, the Easement Agreement, the McDonald’s Leases/Contracts, applicable state law, and under the Bankruptcy Code.

RESERVATION OF RIGHTS

14. McDonald’s reserves the right to supplement this Response with additional charges, obligations and costs (including attorney’s fees and expenses) that may arise under the Easement Agreement and the McDonald’s Leases/Contracts prior to the effective date of any assumption. Additionally, McDonald’s reserves all of its rights, including without limitation, with respect to the McDonald’s Leases/Contracts and all Reserved Lease Issues as defined in the

Sale Order. Nothing herein shall be interpreted as consent by McDonald's to the assumption or assignment of the Easement Agreement, the McDonald's Leases/Contracts and defenses to any request by the Debtors to assume or assign the Easement Agreement and the McDonald's Leases/Contracts are expressly preserved.

15. McDonald's continues to review its records, the APA, the Sale Order, and other relevant documents and information that have been filed with the Court. In addition, a number of other agreements, additional pleadings, and information may be filed or disclosed after the filing of this Response. Accordingly, McDonald's expressly reserves the right to further supplement or amend this Response as information becomes available.

WHEREFORE, for the foregoing reasons, McDonald's files this Response to confirmation of the Plan regarding its rights in respect to the treatment of the Easement Agreement and McDonald's Leases/Contracts under the Plan.

Date: August 2, 2019

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/s/ Rafael X. Zahralddin-Aravena

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